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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 475

MANUFACTURERS RECORD PUBLISHING COMPANY,

Petitioner,

versus

MARGARET E. LAUER, the duly qualified and authorized Testamentary Executrix of the Succession of Jacques E. Blevins, LOUIS J. ROUSSEL and REPUBLIC PETROLEUM CORPORATION,

Respondents.

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Respondents.

OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Margaret E. Lauer, Testamentary Executrix, Louis J. Roussel, and Republic Petroleum Corporation respectfully request this Court to deny the application for a writ of certiorari to the United States Court of Appeal for the Fifth Circuit to review the judgment of that Court entered on June 29, 1959.

OPINIONS BELOW.

The judgments of the Supreme Court of Louisiana which are sought to be reviewed in the federal court proceedings are entitled *Jacques E. Blevins v. Manufacturers Record Publishing Company, et al.*, No. 43,469 on the docket of the Louisiana Supreme Court. The original opinion and decree was rendered on November 12, 1957, and the opinion and decree on rehearing was rendered on May 26, 1958. These opinions are reported in 105 So. (2d) 392.

The opinion of the United States Court of Appeals for the Fifth Circuit that is sought to be reviewed on certiorari is reported in 268 Fed. (2d) 187.

JURISDICTION.

The petitioner asserts jurisdiction under 28 U. S. C. 1254 (1). Respondents deny jurisdiction to review this case by certiorari on the grounds that:

1. (a) Petitioner's failure to timely apply to this Court by appeal from, or certiorari directed to, the Louisiana Supreme Court to review the opinions and decree of that Court within ninety (90) days from the final rendition of same on May 26, 1958, is an effective bar to federal court review. *Angel v. Bullington*, 330 U. S. 183, 67 S. Ct. 657, 91 L. Ed. 832 (1947); *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 263 (1923).

(b) Failure of petitioner to timely raise in the State Court proceedings the federal questions now urged is sufficient basis for denial of writ of certiorari. *Memphis Natural Gas Co. v. Beeler*, 315 U. S. 649,

62 S. Ct. 857, 86 L. Ed. 1090 (1942); *McGarrity v. Delaware River Bridge Commission, et al.*, 292 U. S. 19, 54 S. Ct. 565, 78 L. Ed. 1095 (1934).

2. (a) In a diversity action the Federal Courts are bound by the laws of the state. *Erie Railway Co. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938).

(b) The Louisiana State Courts do not have jurisdiction to annul a decree of the Louisiana Supreme Court. *Dulien Steel Products, Inc., v. Connell*, 252 F. (2d) 556 (5th C. C. A. 1958), certiorari denied, 356 U. S. 968, 78 S. Ct. 1008, 2 L. Ed. (2d) 1074.

(c) Therefore, the Federal District Courts cannot grant relief where the right to recover cannot be asserted in the State Courts. *Guaranty Trust Company of New York v. York*, 326 U. S. 99, 65 S. Ct. 1464, 89 L. Ed. 2079 (1945).

(d) This Court ordinarily accepts the interpretation of local law by the Court of Appeals. *Propper v. Clark*, 337 U. S. 472, 69 S. Ct. 1333, 93 L. Ed. 1480 (1949).

3. (a) This is a diversity action filed in the United States District Court to **enjoin** the enforcement of a final decree of the Louisiana Supreme Court, and by amended pleadings, to have the judgment of the Louisiana Supreme Court declared null and void. It is unquestioned that the State Court had jurisdiction of the parties, as well as the subject matter of the controversy, that pleadings were filed by all parties, all parties were represented

by counsel, the case was tried and argued, petitioner herein and its co-defendants in the State Court proceedings were the successful litigants before the trial court and, thereafter, the case was reviewed by appeal to the proper State appellate court, the Louisiana Supreme Court. Under such circumstances the prohibition against injunctive relief contained in 28 U. S. C. 2283 is fundamental and the United States District Court properly refused to entertain jurisdiction of such complaint. *Amalgamated Clothing Workers of America v. Richman Bros. Co.*, 348 U. S. 511, 75 S. Ct. 452, 99 L. Ed. 600 (1955).

(b) The supplemental prayer for a declaratory judgment did not serve to vest, of itself, the United States District Court with jurisdiction. *Skelly Oil Co. v. Phillips Co.*, 339 U. S. 667, 70 S. Ct. 876, 94 L. Ed. 1194 (1950); *Alabama State Federation of Labor, Local Union No. 103, United Brotherhood of Carpenters and Joiners of America, et al., v. McAdory, County Solicitor, et al.*, 325 U. S. 450, 65 S. Ct. 1384, 89 L. Ed. 1725 (1945).

4. (a) The claim of petitioner of any violation or deprivation of constitutional rights, either State or Federal, are illusory and are not supported by the record.

(b) Jurisdiction to review by certiorari should be granted only in cases of general importance, in cases affecting relations with foreign governments, or to secure uniformity of decisions. *Forsyth v. City of Hammond, et al.*, 166 U. S. 506, 17 S. Ct. 665, 41 L. Ed. 1095 (1897); *Houston Oil*

Co. v. Goodrich, 245 U. S. 440, 38 S. Ct. 140, 62 L. Ed. 385 (1918).

(c) A decision of a State Supreme Court, even if erroneous, does not deprive the unsuccessful party of his property without due process within the meaning of the Fourteenth Amendment of the Federal Constitution. *Bonner v. Gorman*, 213 U. S. 86, 29 S. Ct. 483, 53 L. Ed. 709 (1909); *Worcester County Trust Co. v. Riley*, 302 U. S. 292, 58 S. Ct. 185, 82 L. Ed. 268 (1937).

(d) A federal question or infringement of constitutional right must have a substantial foundation and not depend solely upon unsupported averments. *Lynch, et al., State Tax Com'rs of New York v. People of New York, ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16 (1934); *Buck, et al., v. People of State of California*, 343 U. S. 99, 72 S. Ct. 502 (1952); *City of New Orleans, et al., v. New Orleans Water Works Co., et al.*, 142 U. S. 79, 12 S. Ct. 142 (1891).

(e) A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and should be granted only where there are special and important reasons therefor. Rule 19, Supreme Court Rules; *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).

STATEMENT OF THE CASE.

This action was instituted by petitioner, one of approximately fifty unsuccessful litigants in the State

Courts of Louisiana, to enjoin the execution of a judgment of the Louisiana Supreme Court, which judgment had already been executed at the time that the Federal action was filed on October 14, 1958. By supplemental pleadings, petitioner sought a declaratory judgment, but the application for a declaratory judgment does not raise any new question and does not seek any relief that is not readily available under the application for injunctive relief.

The declared purpose of the action in the United States District Court was to enjoin the three respondents from further executing a final judgment which was rendered by the Louisiana Supreme Court in the proceedings entitled *Jacques E. Blevins v. Manufacturers Record Publishing Company, et al.*, No. 43,469 on the docket of that Court. The original opinion and judgment of the Louisiana Supreme Court was rendered on November 12, 1957, and the opinion and judgment on rehearing was rendered on May 26, 1958. The opinions of the Louisiana Supreme Court on original hearing and on rehearing are reported in 105 S. (2d) 392, *et seq.*

The three respondents filed a motion to dismiss the complaint on the dual grounds that the United States District Court did not have original jurisdiction to entertain the suit, and, further, that the complaint failed to state a claim against the defendants upon which relief may be granted. (Tr. 48.)

The respondents also filed a response to the application for a preliminary injunction which response, among other things, set forth that the judgment of the Louisiana

Supreme Court in Suit No. 43,469 was made executory by judgment rendered and signed on June 9, 1958, in the 29th Judicial District Court for the Parish of St. Charles, State of Louisiana, at which time the Humble Oil and Refining Company, the mineral lessee of (and co-defendant in the State Court proceedings with) Manufacturers Record Publishing Company, the present sole petitioner, delivered the actual physical possession of the land in question to Louis J. Roussel and Republic Petroleum Corporation, mineral lessees of Wisner Estates, Inc., predecessor in title to Jacques E. Blevins. (Tr. 49-53.) This response further set forth that the well on these lands has been in the exclusive possession and under the exclusive control of respondent, Republic Petroleum Corporation, since July 18, 1958, and further, that Humble Oil and Refining Company had paid to the respondents $1,381,512.34 as a tentative accounting for oil and gas production attributable to the lands to which title had been adjudged by the Louisiana Supreme Court to be in the Succession of Jacques E. Blevins. All of these events and acts occurred three to four months before this action was filed in the Federal Court.

Upon these issues the motion to dismiss and application for a preliminary injunction were heard by the District Court, and documentary evidence was submitted on behalf of petitioner and respondents.

The evidence offered by the respondents, in addition to their response to the application for preliminary injunction and to the affidavits in support thereof, consists of the original brief filed by the Succession of Jacques E. Blevins in the Louisiana Supreme Court, to-

gether with the entire record filed in that Court under Docket No. 43,469.

While the matter was under advisement by the District Court on the application for a preliminary injunction, petitioner filed a motion to amend its complaint, by asking the Court to declare the judgment of the Louisiana Supreme Court in Suit No. 43,469 to be null and void and of no effect insofar as it declares that the respondents have any right, title or interest in the property described in the complaint. (Tr. 59-61.) An opposition to this motion to amend the complaint was filed by the respondents on the grounds that the Declaratory Judgment Statute (28 U. S. C. A. 2201, *et seq.*) does not enlarge the jurisdiction of the United States District Court but is purely procedural, affording an opportunity for a remedy only where the Court already has jurisdiction; that declaratory judgment proceedings are not available to determine whether rights theretofore adjudicated by a State Court have been properly adjudicated; that there was no actual controversy with respect to the meaning and effect of the judgment of the Louisiana Supreme Court in Docket No. 43,469; and that the injunction proceeding in the original complaint included all issues that might be raised under a declaratory judgment suit. (Tr. 59-63.) The District Court granted the motion of petitioner to amend its complaint, at which time it was stipulated that the earlier motion to dismiss filed by the respondents would apply to the complaint, as amended. (Tr. 63.)

On January 7, 1959, the District Court rendered a written opinion that the motion to dismiss was well founded and granted such motion. (Tr. 64-76.) A judg-

ment of dismissal was entered by the Court on January 12, 1959 (Tr. 77); and thereafter a motion for a new trial and rehearing was filed by petitioner on January 23, 1959.

The motion was denied and petitioner then prosecuted an appeal to the United States Circuit Court of Appeals for the Fifth Circuit. On June 29, 1959, a unanimous opinion and decree was rendered by that Court affirming the District Court. A petition for rehearing was filed by the petitioner, which was denied on July 28, 1959. The petitioner then filed this application for certiorari to this Court.

PETITIONER'S REMEDY WAS BY APPEAL AND/OR CERTIORARI TO THIS COURT FROM THE JUDGMENT OF THE LOUISIANA SUPREME COURT IN SUIT No. 43,469.

Petitioner, as well as the other forty-nine unsuccessful litigants in the State Court proceedings, did not elect to prosecute either an appeal from, or certiorari to, the Louisiana Supreme Court to review the final opinion and decree of that Court rendered on May 26, 1958. No such appeal was filed, nor was an application made for a writ of certiorari, and, consequently, after the lapse of ninety (90) days the judgment of the Louisiana Supreme Court became final and was not subject to review either by this Court, by a lower Federal Court, or by a State Court.

This principle has been clearly recognized by this Court in *Rooker v. Fidelity Trust Co.*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923). In that case a bill of

equity was filed in the Federal Court to have a judgment of the State Court in Indiana, which had been affirmed by the Supreme Court of that State, declared null and void. An effort to have the judgment reviewed by this Court on a writ of error had failed because the record did not disclose the presence of any question constituting a basis for such a review. (See 261 U. S. 114, 43 S. Ct. 288.) The parties in the Federal Court action were the same as in the litigation in the State Court with the addition of two defendants. The petitioners claimed that the judgment rendered in the State Courts of Indiana was in contravention of the contract clause of the Constitution of the United States (Article 1, § 10, Cl. 1) and the due process of law and equal protection clauses of the Fourteenth Amendment in that it gave effect to a State statute alleged to be in conflict with those clauses and did not give effect to a prior decision in the same cause by the Indiana Supreme Court which is alleged to have become the law of the case. The United States District Court held that the suit was not within its jurisdiction and dismissed the bill. The petitioners then appealed directly to this Court and the decree of dismissal was affirmed. This Court pointed out that the suit was plainly not within the jurisdiction of the District Court as defined by Congress, and that the District Court's jurisdiction was one of original jurisdiction rather than appellate. This Court stated:

> "It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject-matter and the parties, that a full hearing was had therein, that the judgment was responsive to the

issues, and that it was affirmed by the Supreme Court of the state on an appeal by the plaintiffs. 131 N. E. 769. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Elliott v. Peirsol, 1 Pet. 328, 340, 7 L. Ed. 164; Thompson v. Tolmie, 2 Pet. 157, 169, 7 L. Ed. 381; Voorhees v. Bank of United States, 10 Pet. 449, 474, 9 L. Ed 490; Cornett v. Williams, 20 Wall. 226, 249; Ex parte Harding, 120 U. S. 782, 7 Sup. Ct. 780, 30 L. Ed. 824. **Under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of that character.** Judicial Code, § 237, as amended by Act. Sept. 6, 1916, c. 448, § 2, 39 Stat. 726 (Comp. St. § 1214). **To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.** Judicial Code, § 24 (Comp. St. § 991). **Besides, the period within which a proceeding might be begun for the correction of errors such as are charged in the bill had expired before it was filed.** Act. Sept. 6, 1916, c. 448, § 6, 39 Stat. 726 (Comp. St. § 1228a), **and, as is point-**

ed out in Voorhees v. Bank of United States, supra, after that period elapses an aggrieved litigant cannot be permitted to do indirectly what he no longer can do directly." (Emphasis supplied.) (263 U. S. 415, 416, 44 Sup. Ct. 150.)

In *Angel v. Bullington*, 330 U. S. 183, 67 S. Ct. 657, 91 L. Ed. 832 (1947), Bullington, a citizen of Virginia, sold land in Virginia to Angel, a citizen of North Carolina, under a deed of trust. Upon default, the land was sold and the proceeds applied to the note. Bullington then sued in the State Court of North Carolina for a deficiency claim. Angel claimed the action was barred by a North Carolina statute and upon appeal to the Supreme Court of North Carolina, the action was dismissed on the basis of that statute. **Bullington did not seek to review the State Court judgment by appeal or certiorari to this Court,** but instead sued Angel for the deficiency in the United States District Court in North Carolina. Bullington was awarded a judgment which was affirmed by the Circuit Court of Appeals for the Fourth Circuit and this Court then granted certiorari. This Court reversed the Circuit Court of Appeal and pointed out that litigation is needless if, by fair process, a controversy has gone through the courts to a conclusion. This Court further stated that litigation has terminated where issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties. *Chicot County Drainage District v. Baxter Bank*, 308 U. S. 371, 60 S. Ct. 317, 84 L. Ed. 329 (1940).

The reasoning of this Court in *Angel v. Bullington, supra*, appears to be conclusive of the present issue, and

we quote the following pertinent portion of this Court's opinion:

> "Here, claims based on the United States Constitution were plainly and reasonably made in the North Carolina suit. The North Carolina Supreme Court met these claims. It met them by saying that the North Carolina statute did not deal with substantive matters but merely with matters regulating local procedure. But whether the claims are based on a federal right or are merely of local concern is itself a federal question on which this Court, and not the Supreme Court of North Carolina, has the last say. That Court could not put a federal claim aside, as though it were not in litigation, by the talismanic word 'jurisdiction'. **When an asserted federal right is denied, the sufficiency of the grounds of denial is for this Court to decide. Titus v. Wallick, 306 U. S. 282, 291, 59 S. Ct. 557, 562, 83 L. Ed. 653. Bullington could have come here, not merely by the grace of this Court on certiorari, but on appeal, as did White in White v. Hart, supra, to challenge, successfully, the right of Georgia to limit the jurisdiction of the George courts;** as did the East New York Savings Bank in the recent case of East New York Sav. Bank v. Hahn, 326 U. S. 230, 66 S. Ct. 69, 160 A. L. R. 1279, to challenge, though unsuccessfully, the limitation which New York placed upon the jurisdiction of its courts. Ci. Kenney v. Supreme Lodge, 252 U. S. 411, 416, 40 S. Ct. 371, 372, 64 L. Ed. 638, 10 A. L. R. 716. **Since it was open for Bullington to come here to seek reversal of the de-**

cision of the North Carolina Supreme Court shutting him out of the North Carolina courts and he chose not to do so, the decision of the North Carolina Supreme Court concluded an adjudication of a federal question even though it was not couched in those terms. For purposes of litigating the issues in controversy in the North Carolina action, the North Carolina Supreme Court was an intermediate tribunal. **If a litigant chooses not to continue to assert his rights after an intermediate tribunal has decided against him, he has concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him.** An adjudication of an issue implies that a man had a chance to win his case. The chance was necessarily afforded by the North Carolina litigation.

"It was in process of determination when the Supreme Court of North Carolina decided against him. He forewent his right to have a higher court, this Court, enable him to win his chance by holding that he was right and that the North Carolina Supreme Court was wrong. **He cannot begin all over again in an action involving the same issues before another forum in the same State.**" (Empasis supplied.) (330 U. S. 189, 190, 67 S. Ct. 660, 661.)

In *Brownell v. The Chase National Bank of the City of New York*, 325 U. S. 36, 77 S. Ct. 116, 1 L. Ed. 101 (1956), the United States Attorney General, as successor to the Alien Property Custodian, had intervened

in an action in the New York courts brought by the trustee for an interpretation of a trust indenture. The Attorney General sought relief that the powers reserved to the settlor, a German alien, be held to have passed by virtue of the vesting order to the Attorney General. This relief was denied by the New York Courts and the judgment was affirmed by the Court of last resort in New York, the Court of Appeals. **No review of that order was sought in the United States Supreme Court.** Subsequently, in another suit in New York the Attorney General requested that the principal of the trust be transferred to him. This relief was denied, and the judgment was affirmed upon appeal to the New York Court of Appeals. The Attorney General then brought certiorari to this Court, and the judgment was affirmed. We quote the pertinent portion of this Court's opinion, to-wit:

> "Under familiar principles of res judicata, the claim so tendered may not be relitigated. Cromwell v. County of Sac, 94 U. S. 351, 352, 24 L. Ed. 195. Tait v. Western Maryland R. Co., 289 U. S. 620, 623, 53 S. Ct. 706, 707, 77 L. Ed. 1405. **If he was not content with the first ruling, his remedy was by certiorari to this Court.** Angel v. Bullington, 330 U. S. 183, 189, 67 S. Ct. 657, 660, 91 L. Ed. 832. **Having failed to seek and obtain that review, he is barred from relitigating the issues tendered in the first suit."** (Emphasis supplied.) (352 U. S. 39, 40, 77 S. Ct. 117, 118.)

Actually, petitioner is seeking to have a lower Federal Court review the opinion and decree of the Louisiana State Supreme Court, after having failed to timely

seek the appellate and supervisory jurisdiction of this Court following the final action of the Louisiana Supreme Court. This review has been denied to petitioner by the United States District Court and by the Circuit Court of Appeals, and petitioner now requests this Court by certiorari to review such **final** judgment of the State Court. While petitioner contends that it is merely seeking in a diversity proceedings to have a judgment of the State Supreme Court declared null and void and enjoined, nevertheless, the present proceedings are tantamount to a review of and or appeal from the judgment of the Louisiana Supreme Court.

The failure of petitioner to have raised, in timely and proper fashion in the State Court proceedings, the federal questions now urged is in itself sufficient basis for the denial of the writ of certiorari. *Memphis Natural Gas Co. v. Beeler*, 315 U. S. 649, 62 S. Ct. 857, 86 L. Ed. 1090 (1942); *Lynch, et al., v. People of New York, ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16, 79 L. Ed. 191 (1934); *McGarrity v. Delaware River Bridge Commission, et al.*, 292 U. S. 19, 54 S. Ct. 565, 78 L. Ed. 1095 (1934).

Petitioner attempts to exculpate itself by belatedly claiming in the Federal Court proceedings that the deprivation of its constitutional rights, and the denial of due process, only became apparent after the Louisiana Supreme Court had rendered its final opinion on rehearing on May 26, 1958.

Petitioner improperly argues that it did not have any notice of the violation of its alleged constitutional

rights after the State case was finally decided on rehearing without any reservation to it to apply for a second rehearing.

Assuming, but not admitting that the Louisiana Supreme Court actually violated one or more of petitioner's alleged constitutional rights, respondents would show that petitioner had full and complete knowledge thereof on November 12, 1957, when the original opinion and decree were rendered by the Louisiana Supreme Court. While this is denied by the petitioner on the one hand, it is admitted on the other hand on page 5 of petitioner's application when it says:

> "The three dissenting justices of the Louisiana Supreme Court took cognizance that the mandatory substantive and procedural law of the State of Louisiana had been violated and denied petitioner by the majority of the Court."

Reference to these dissenting opinions will clearly show that the three dissenters (Honorable McCaleb, Hamiter and Hawthorne, Justices) in what counsel has deemed to call vigorous dissents complained about the alleged failure of the majority opinion to require the plaintiff in the State suit to recover "on the strength of his own title and not on the weakness of that of his adversary." (See Appendix, page 52, for Mr. McCaleb's statement, page 55 for Mr. Hamiter's statement and page 57 for Mr. Hawthorne's statement.)

Because of petitioner's own failure to act, the application for the writ of certiorari should be denied for want of a timely presented federal question. *McGarrity v.*

Delaware River Bridge Commission, et al., supra; Wabash Railroad Co. v. City of Defiance, 167 U. S. 88, 17 S. Ct. 748, 42 L. Ed. 87 (1897); *Whitney v. California*, 274 U. S. 357, 47 S. Ct. 641, 71 L. Ed. 1095 (1927).

Furthermore, the Louisiana Supreme Court certainly had a right to be able to consider whether or not whatever judgment it had rendered might violate any of the constitutional rights of the petitioner. By not timely raising the present constitutional claims before the Louisiana Supreme Court, petitioner thereby deprived the Louisiana Supreme Court of its right to consider such claims.

Even if the claim of lack of due process could be properly considered at this time and through this procedure, such claim is so trivial as to be completely frivolous. See: *Consolidated Turnpike Co. v. Norfolk & Ocean-view Railway Co.*, 228 U. S. 596, 33 S. Ct. 605, 57 L. Ed. 982 (1913) wherein this Court pointed out that the bare claim that the judgment of a State Supreme Court operated to take the property of the plaintiff in error without compensation was not enough to justify this Court in taking jurisdiction.

Even if petitioner's present claims were not frivolous, the procedure under the circumstances of this case raises no substantial federal question. *Edleman v. People of State of California*, 344 U. S. 357, 73 S. Ct. 293, 97 L. Ed. 387 (1953); *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).

In *Edleman v. People of State of California, supra,* this Court recognized that it was without power to decide whether constitutional rights were violated where the federal questions were not seasonably raised in accordance with the requirements of state law. In that case, the petitioner was claiming that he had been deprived of notice and opportunity to have a hearing in the State Appellate Court.

In *Rice v. Sioux City Memorial Park Cemetery, Inc., supra,* the basis for the petitioner's resort to this Court was primarily the Fourteenth Amendment through the due process and equal protection clauses. This Court pointed out that it does not sit to satisfy a scholarly interest in such issues, nor does it sit for the benefit of particular litigants. See also *Magnum Import Co. v. Coty,* 262 U. S. 159, 43 S. Ct. 531, 67 L. Ed. 922 (1923).

We submit, therefore, that, petitioner's failure to have raised its present constitutional claims in the State Court proceedings, as well as its failure to timely apply to this Court for an appeal from, or writ of certiorari directed to, the Louisiana Supreme Court is fatal to its present application for certiorari. Otherwise, litigation would be interminable if the parties are permitted to exhaust the appellate processes of the State Courts and then begin anew in the Federal District Courts.

IN A DIVERSITY ACTION THE FEDERAL COURTS ARE BOUND BY THE LAWS OF THE STATE.

In a recent decision, the Court of Appeals for the Fifth Circuit recognized that under the statutes and juris-

prudence of the State of Louisiana, the Louisiana State District Courts have no jurisdiction to annul a final judgment of the Louisiana State Supreme Court and that, consequently, the Federal District Court does not have jurisdiction to grant relief which is not authorized under the State law. *Dulien Steel Products, Inc., v. Connell*, 252 F. (2d) 556 (5th C. C. A. 1958), certiorari denied 356 U. S. 968, 78 S. Ct. 1008, 2 L. Ed. (2) 1074.

The Circuit Court of Appeals interpreted the law of Louisiana in this respect, which law is set forth in many decisions. For example: *Melancton's Heirs v. Broussard, et al.*, 2 La. 8 (1830); *Succession of Martin v. Succession of Hogyatt*, 37 La. Ann. 340 (1885); *Clark v. Delta Tank Manufacturing Co.*, 28 So. (2d) 62 (La. Appeal 1946); *Gajan v. Patout and Burguieres*, 135 La. 156, 65 So. 17 (1914).

Under accepted practice, this Court ordinarily accepts the interpretation of local law by the Courts of Appeal. *Ragan v. Merchants Transfer and Warehouse Company*, 337 U. S. 530, 69 S. Ct. 1233, 93 L. Ed. 1520 (1949); *Propper v. Clark*, 337 U. S. 472, 69 S. Ct. 1333, 93 L. Ed. 1480 (1949).

Since the decision in *Erie Railroad Company v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), it is settled that the laws of the State are controlling upon the Federal Courts. A Federal Court in a diversity action merely adjudicates a State-created right and it cannot grant relief if the right to recover is made unavailable by the State, nor can it substantially affect the enforcement of the right as given by the State. *Guar-*

anty Trust Company of New York v. York, 326 U. S. 99, 65 S. Ct. 1464, 89 L. Ed. 2079 (1945). Since the cause of action is created by local law, its measure can only be found in local law. *Ragan v. Merchants Transfer and Warehouse Company, supra.*

Since the whole purpose of the Federal Court proceedings is an attack on the decree and opinion of the Louisiana Supreme Court and since under Louisiana law the District Courts can have no jurisdiction to annul such judgment, it necessarily follows that the doctrine in *Dulien Steel Products, Inc., v. Connell, supra,* must prevail.

28 U. S. C. 2283 PROHIBITS THE GRANTING OF AN INJUNCTION BY THE UNITED STATES DISTRICT COURT AGAINST THE ENFORCEMENT OF A FINAL DECREE OF THE LOUISIANA SUPREME COURT.

In 1948, Section 265 of the Judicial Code was amended, which revision is now contained in Title 28 U. S. C., Section 2283.

The federal jurisprudence subsequent to the 1948 amendment supports the proposition that jurisdiction of a Federal Court to enjoin State Court actions, other than those within the specific exceptions prescribed in Section 2283, may not be implied. See: *Amalgamated Clothing Workers of America v. Richman Bros. Co.*, 348 U. S. 511, 75 S. Ct. 452, 99 L. Ed. 600 (1955); *International Union of Electrical Radio and Machine Workers, C.I.O., v. Underwood Corporation*, 219 F. (2d) 99 (2d C. C. A. 1954); *Sexton v. Barry*, 233 F. (2d) 220 (6th C. C. A. 1956).

In *Amalgamated Clothing Workers of America v. Richman Bros. Co., supra*, this Court recognized that Congress, by the amendment in 1948, made clear beyond cavil that the prohibition against the issuance of an injunction is not to be whittled away by judicial improvisation.

The Federal jurisprudence prior to 1948 which had recognized limited exceptions to this rule (where fraud or jurisdiction were involved) was reviewed by this Court in *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, 62 S. Ct. 139, 86 L. Ed. 100 (1941), and it was stated that "the foundation of these cases is thus very doubtful."

The Third Circuit Court of Appeals held that it had no jurisdiction over a suit for a declaratory judgment coupled with an injunction, that a decree of the New Jersey Supreme Court was invalid as contravening the due process clause of the Constitution. *Nongard v. Burlington County Bridge Commission*, 229 F. (2d) 622 (3rd C. C. A. 1956). See also *International Union of Electrical Radio and Machine Workers, C.I.O., v. Underwood Corporation, supra; Sexton v. Barry*, 233 F. (2d) 220 (6th C. C. A. 1956) cert. den. 350 U. S. 838.

It has been held that this prohibition applies to final judgments of the State Court where the judgment-plaintiff is sought to be enjoined rather than the officers of the Court. *H. J. Heinz Co. v. Owens*, 189 F. (2d) 505 (C. C. A. 9th 1951). Moreover, this Court has recognized that the clause "Proceedings in a State Court" within the meaning of Section 2283 includes "any proceedings supplemental or ancillary taken with a view to making the suit or judgment effective". *Hill v. Martin*,

296 U. S. 393, 56 S. Ct. 278, 80 L. Ed. 293 (1935). Furthermore, the prohibition in Section 2283 cannot be avoided by framing the injunction as a restraint on the party litigant rather than directly against the State Court itself. *Oklahoma Packing Company v. Oklahoma Gas & Electric Company*, 309 U. S. 4, 60 S. Ct. 215, 84 L. Ed. 537 (1940). Nor can the coupling of a declaratory judgment claim with the injunction suit serve to circumvent this lack of jurisdiction. *Nongard v. Burlington County Bridge Commission, supra.*

The amendment of the complaint by petitioner to seek a declaratory judgment in addition to the injunction did not serve to vest the District Court with jurisdiction. The Declaratory Judgment Act (28 U. S. C. A. 2201 as amended, and 2202, and 28 U. S. C. A. Rule 57 of the Rules of Civil Procedure) does not enlarge the jurisdiction of the United States District Court, but is purely procedural giving an opportunity for remedy only where the court has jurisdiction. *Skelly Oil Company v. Phillips Co.*, 339 U. S. 667, 70 S. Ct. 876, 94 L. Ed. 1194 (1950); *Goldstein v. Johnson*, 184 F. (2d) 342 (D. C., C. C. A. 1950) certiorari denied 340 U. S. 879; *Cadillac Publishing Company, Inc., v. Summerfield*, 227 F. (2d) 29 (D. C., C. C. A. 1955) certiorari denied 350 U. S. 901; *Commercial Casualty Insurance Co. v. Fowles*, 154 F. (2d) 884 (C. C. A. 9th 1946); *Morgantown Glassware Guild, Inc., v. Humphrey*, 236 F. (2d) 670 (D. C., C. C. A. 1956).

It has been repeatedly held that the declaratory judgment procedure may not be used for the purpose of determining whether rights theretofore adjudicated have been properly adjudicated. *Rudolph Tuckson v. Donald*

Clemmer, 231 F. (2d) 658 (4th C. C. A. 1956); *Hurley v. Lindsay*, 207 F. (2d) 410 (4th C. C. A. 1953); *Clark, U. S. Attorney General, v. Memolo*, 174 F. (2d) 978, at 981 (D. C., C. C. A. 1949).

In *H. J. Heinz Co. v. Owens*, 189 F. (2d) 505 (9th C. C. A. 1951) writ denied 342 U. S. 905, the Circuit Court of Appeals pointed out that the wholesome purpose of the Declaratory Judgment Act would be aborted by its use as an instrument of procedural fencing either to secure delay or to choose a forum, and that the perversion of the purpose of such legislation occurs when it is used to anticipate the result of litigation pending in another forum or to re-examine what has been there decided.

The petitioner had a reasonable opportunity in the State Court proceedings to lay a proper foundation for an appeal or for writs to this Court. Petitioner's inaction and loss of rights as a result thereof cannot be substituted by a declaratory judgment proceeding. *Kaufman and Ruderman, Inc., v. Cohn and Rosenberger*, 177 F. (2d) 849 (2d C. C. A. 1949); *Hurley v. Lindsay*, 207 F. (2d) 410 (4th C. C. A. 1953). It has been recognized that the purpose of the declaratory judgment statute is to adjudicate rights of parties who have not been given an opportunity to have those rights determined and is not for the purpose of having a declaration of such rights as a different declaration thereof; no litigant is entitled to two declarations of the same rights. *McLain, et al., v. Lance, et al.*, 146 F. (2d) 341 (5th C. C. A. 1945), certiorari denied, 325 U. S. 855.

Since the United States District Court is prohibited from enjoining the enforcement of the final judgment of

a State Supreme Court, and since the Declaratory Judgment Act does not enlarge the jurisdiction of the Federal Courts, it follows that this action was properly dismissed.

Petitioner relies upon *County of Allegheny v. Frank Mashuda Company*, 79 S. Ct. 1060 (1959), which was a diversity action for ouster of lands, together with an injunction, against a state agency which had taken possession of lands under state expropriation proceedings. **The prayer for injunctive relief was abandoned in this Court.** However, this Court recognized that Section 2283 bars injunctions designed to stay state court proceedings. Further, this Court expressly found that the adjudication of the issues in the case would present no hazard of disrupting federal-state relations. Of course, this is not the situation in the present case where the Federal Courts, in reality, are being called upon to interpret state law in a manner contrary to the interpretation by the highest Court of the State.

A FEDERAL COURT CANNOT REVIEW A STATE COURT DECISION MERELY UPON THE ALLEGATIONS OF A VIOLATION OF DUE PROCESS OF LAW, WHERE THE STATE COURT HAD JURISDICTION OVER THE PARTIES, ISSUE WAS JOINED, AND THE MATTER RESULTED IN A FINAL JUDGMENT.

Petitioner has made various claims as to deprivation of constitutional rights under the Federal and State Constitutions. A reading of the State Court opinions (105 So. (2d) 392) discloses that the record does not support the conclusions, inferences and deductions which are drawn therefrom by petitioner.

The mere unsupported averment of petitioner as to deprivation of constitutional rights or denial of due process is not sufficient. See: *Consolidated Turnpike Co. v. Norfolk & Oceanview Railroad Co., supra; Edleman v. California, supra.*

Even if the decision of the Louisiana Supreme Court were erroneous, which is denied, the jurisprudence is uniform that an erroneous decision does not deprive the unsuccessful party of his property without due process of law within the meaning of the Fourteenth Amendment of the United States Constitution. *Bristow Battery Co. v. Board of Commissioners of Rogers County,* 37 F. (2d) 504 (10th C. C. A. 1930), certiorari denied, 282 U. S. 843, 51 S. Ct. 23, 75 L. Ed. 748; *Porter v. Bennison,* 180 F. (2d) 523 (10th C. C. A. 1950), certiorari denied 340 U. S. 817, 71 S. Ct. 47, 95 L. Ed. 600; *Sun Ray Oil Co. v. Commissioner of Internal Revenue,* 147 F. (2d) 962 (10th C. C. A. 1945), certiorari denied, 325 U. S. 861, 65 S. Ct. 1201, 89 L. Ed. 1982; *Lynch v. International Banking Corporation,* 31 F. (2d) 942 (9th C. C. A. 1929), certiorari denied, 280 U. S. 571, 50 S. Ct. 28, 74 L. Ed. 624; *Lake v. Central Savings Bank of Oakland,* 27 F. (2d) 847 (C. C. A. 9th 1928), certiorari denied, 275 U. S. 571, 48 S. Ct. 159, 72 L. Ed. 432; *Thomson v. Butler,* 136 F. (2d) 644 (8th C. C. A. 1943), certiorari denied, 320 U. S. 761, 64 S. Ct. 69, 88 L. Ed. 454; *Biggs v. Ward,* 212 F. (2d) 209 (7th C. C. A. 1954); *Given v. Moll,* 177 F. (2d) 765 (5th C. C. A. 1949), certiorari denied, 339 U. S. 964, 70 S. Ct. 999, 94 L. Ed. 1373; *United States v. Ragen,* 247 F. (2d) 638 (7th C. C. A. 1957), certiorari denied, 351 U. S. 957, 76 S. Ct. 858, 100 L. Ed. 1479.

The evidence of a substantial question of constitutionality must be shown in the allegations of the complaint. *Levering & Garrigues Co. v. Morrin, et al.*, 289 U. S. 103, 53 S. Ct. 549, 77 L. Ed. 1062 (1933). A litigant has no vested right in prior decisions of a State Court; even though the decision of the Supreme Court of a State may have been erroneous and even contrary to principles established by earlier decisions, such a decision on that cause alone does not constitute an infraction of due process and equal protection and, therefore, does not present any justiciable Federal question. *Smith v. Fourth National Bank of Tulsa*, 141 F. (2d) 294 (10th C. C. A. 1944).

In *Buchalter v. People of the State of New York*, 319 U. S. 427, 63 S. Ct. 1129, 87 L. Ed. 1492 (1943), this Court recognized that the Fourteenth Amendment does not draw to itself the provisions of the State constitutions or the State laws; but that it leaves the States free to enforce their laws under such statutory provisions and common law doctrines as they deem appropriate and it (the Fourteenth Amendment) does not permit a party to bring to the test of a decision in the Federal Court every ruling made in the course of a trial in a State Court. An erroneous decision of a State Court does not deprive the unsuccessful party of his property without due process of law within the meaning of the Fourteenth Amendment of the Federal Constitution. *Central Land Co. v. Laidley*, 159 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91 (1895); *Patterson v. Colorado*, 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

In *Bonner v. Gorman*, 213 U. S. 86, 29 S. Ct. 483, 53 L. Ed. 709 (1909), this Court recognized that it has been firmly established in the jurisprudence that when parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a State Court does not deprive the unsuccessful party of his property without due process of law within the meaning of the Fourteenth Amendment of the Federal Constitution. Similarly, in *Worcester County Trust Co. v. Riley*, 302 U. S. 292, 58 S. Ct. 185, 82 L. Ed. 268 (1937) this Court unequivocally stated that the Constitution of the United States does not guarantee that the decisions of State Courts shall be free from error; or require that pronouncements shall be consistent.

The failure of a litigant in a State Court, even though there may have been error in the decision by the State Court, is not sufficient to constitute a substantial due process question. *Defiance Water Co. v. City of Defiance*, 191 U. S. 184, 24 S. Ct. 63, 48 L. Ed. 140 (1903); *O'Callaghan v. O'Brien*, 199 U. S. 89, 25 S. Ct. 727, 50 L. Ed. 101 (1905); *Wagner Electric Manufacturing Co. v. Lyndon*, 262 U. S. 226, 43 S. Ct. 589, 67 L. Ed. 961 (1923).

Pretermitting all other considerations, jurisdiction to review by certiorari should be granted only in cases of general importance, in cases affecting relations with foreign governments, or to secure uniformity of decisions, and, consequently, there is no basis for this Court to review the present case. *Forsyth v. City of Hammond, et al.*, 166 U. S. 506, 17 S. Ct. 665, 41 L. Ed. 1095 (1897);

Houston Oil Co. v. Goodrich, 245 U. S. 440, 38 S. Ct. 140, 62 L. Ed. 385 (1918).

In *Forsyth v. City of Hammond*, *supra*, this Court stated:

> "It is conceded that the judgment of the supreme court of Indiana in this controversy could not be reviewed by this court on writ of error; that the questions involved and decided by that court are not of a federal nature, or such as to vest any appellate jurisdiction in this court. But, if this court cannot set aside such judgment on the ground of error of law, it would seem to follow that no subordinate federal court has the power on the same ground to strike it down. What the highest court of the United States cannot do directly would seem to be beyond the reach of a subordinate court in collateral attack." (17 S. Ct. 671.)

The present writ of certiorari does not present a substantial federal question and the record does not support any claim of deprivation of due process. A federal question or infringement of constitutional rights must have a substantial foundation and not depend solely upon unsupported averment. *Lynch, et al., State Tax Com'rs of New York, v. People of New York, ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16 (1934); *Buck, et al., v. People of State of California*, 343 U. S. 99, 72 S. Ct. 502 (1952); *City of New Orleans, et al., v. New Orleans Water Works Co., et al.*, 142 U. S. 79, 12 S. Ct. 142 (1891).

The petitioner, in its petition for rehearing in the Circuit Court of Appeals, claimed for the first time that

it had been denied its day in the State Court proceedings because it had no opportunity to present its evidence concerning documents which it claimed had been excluded from the record because of petitioner's objections thereto.

Petitioner makes this same claim in this Court but does not refer to the record to support this bare averment. (Petition for Certiorari, pp. 3, 4, 6 and 10.) Petitioner in its application for rehearing in the Circuit Court of Appeals referred to one particular document (P-24) only and has cited in that brief what it considers to be the Court's ruling on pages 556 and 1715 of the State Court transcript.

Petitioner is in complete error as to such ruling, which error may be attributable to the fact that the present counsel for petitioner did not participate in the State Court trial. Such trial was over a period of many months and resulted in 1,892 pages of transcribed testimony and 350 exhibits. All of the earlier rulings of the trial court, including the ruling to which petitioner now makes reference, were recalled by the Court, with the exception of the ruling as to Exhibit P-2-A which formed no part of the chain of title of the Estate of Jacques E. Blevins, the plaintiff in the State Court proceedings.

It is less than being fair with the Court for petitioner to represent that evidence was considered by the Louisiana Supreme Court which had theretofore been excluded by the trial judge. A careful examination of the transcript will show that the evidence was actually not excluded. If it had been, it is difficult to explain why the three vigorous dissenting opinions would not have mentioned

such a fact. But even if petitioner were correct (and it is absolutely wrong), the Louisiana Supreme Court had a perfect right to examine all of the evidence that was in the record and the document about which petitioner complains was properly in the record. The Louisiana Supreme Court has a right at all times to reverse a trial court on a question of fact where in its opinion the trial court's ruling has been manifestly erroneous. Moreover, the action by the Louisiana Supreme Court was clear and unambiguous and petitioner was well aware of such action on November 12, 1957, when the original opinion and decree were entered. Petitioner did not claim in its application for rehearing that such action on the part of the Louisiana Supreme Court deprived petitioner of any of its constitutional rights!

The pertinent and controlling ruling is set forth in the State Court transcript at page 1745 wherein the trial judge, after stating that he would maintain the objections of the defendants as to Exhibit P-2-A, said:

"THE COURT (continuing):

"As to all other Exhibits which have been argued, I have decided to recall my ruling and now refer all objections, to all evidence to the merits, subject to the objections of the defendants and subject to any objections you may wish to make to the rulings. If this meets with your approval, I think we could facilitate matters when you make your objections and arguments, and refer them to the merits."

This ruling of the Court was accepted by counsel who then represented the present petitioner and we quote the remarks of such counsel:

> "We certainly would not want to say that ALL exhibits should be admitted subject to your ruling; but if that is Your Honor's ruling we take no exception to it, because we feel it is most important for you to have the Exhibits before you when you make your ruling on them."

It is patent, therefore, that all exhibits (with the exception of P-2-A) were offered and filed in evidence and that the objections made by the defendants in the State Court proceedings were referred to the merits. In civil cases in Louisiana, it is not necessary to reserve a bill of exceptions, or note in lieu thereof, to any ruling by a trial judge upon the admissibility or competency of any evidence tendered in a case. Louisiana Act 61 of 1908; Louisiana Revised Statutes 13:4448.

An examination of the documentary evidence filed in the State Court, and in particular P-24 referred to in petitioner's brief, readily discloses that such documents bear the inscription of the Clerk of Court as to filing.

In Louisiana, the Supreme Court decides a case on the issues and pleadings in evidence and not on the argument of counsel in the Court below or even on reasons assigned by the trial judge, and the fact that the trial judge decides the case on one of the points at issue does not preclude the Supreme Court from deciding the case on another point. *Board of Commissioners of Orleans Levee District v. Shushan*, 197 La. 598, 2 So. (2d) 35 (1941).

In *Richard v. Cain, et al.*, 168 La. 608, 122 So. 866 (1929), certain testimony was objected to and excluded by the trial court. The rejected evidence was then introduced for the purpose of permitting the Appellate Court to review such ruling but such procedure was objected to by the defendants. The Supreme Court of Louisiana pointed out that such evidence was before the Appellate Court and that it was therefore enabled to make a final disposition of the case on the appeal.

The record is clear that all of the documentary evidence, with the exception of Exhibit P-2-A, was filed and introduced in evidence in the trial court subject to the objections of the defendants, one of whom is the present petitioner, and that all objections were referred to the merits. Consequently, all of the documents, including Exhibit P-24, were before the Louisiana Supreme Court when it decided the issues of title in favor of the Estate of Jacques E. Blevins.

A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and should be granted only where there are special and important reasons therefor. Rule 19, Supreme Court Rules; *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U. S. 70, 75 S. Ct. 614, 99 L. Ed. 897 (1955).

The present controversy is not designed to resolve conflicts of opinion on federal questions that have arisen among the lower Courts, nor does it involve questions of wide import under the Federal Constitution. Neither are there any special and important reasons to justify the review of this case. Therefore, this Court, in the exercise

of its discretion, should deny the present application for writs of certiorari.

This controversy does not involve or affect class litigation but is merely a review of a State Court proceeding among private litigants involving local statutes and local laws. This Court should be called upon only to decide those questions whose resolution will have immediate importance far beyond the particular facts and parties involved.

In the present instance, the petitioner has failed or neglected to follow the proper procedure prescribed by Statute (28 U. S. C. 1257) in applying to this Court either for an appeal from, or certiorari directed to, the Louisiana Supreme Court, for the purpose of having this Court review the final judgment of the Louisiana Supreme Court. If any question of constitutional rights had been involved, as now belatedly claimed by petitioner, such question necessarily arose and was apparent when the Louisiana Supreme Court resolved the question of title in favor of Margaret E. Lauer, Testamentary Executrix, one of the respondents, in the original decree rendered on November 12, 1957. Certainly no new or different question of constitutional law or rights could or did arise since the Louisiana Supreme Court had already decided the title adversely to petitioner and this judgment was affirmed as to the tracts in the controversy on May 20, 1958. That judgment became final long before petitioner filed its original complaint in this case, and the Federal Court proceedings necessarily constitute an attempt at relitigating or reviewing the State Court's final decree and judgment.

Petitioner contends, however, that it has not called upon the United States District Court to review the final unappealable judgment of the Louisiana Supreme Court. This is tantamount to asking that the use of the judgment be restrained and enjoined without an examination of the evidence, oral and documentary, upon which the Louisiana Supreme Court based its own final decision. The argument urged by petitioner seems to recognize that a United States District Court may not under the established jurisprudence examine and evaluate the evidence in a State Court record. At the same time, petitioner proposes that the United States District Court set aside and render ineffective a final judgment of a State Supreme Court without even ascertaining whether or not such judgment is supported by a clear preponderance of the evidence and the weight of the State jurisprudence.

It is unthinkable that this Court would sanction the setting aside of a State Supreme Court's final decision without first determining that the decision is contrary to the law of the State's highest Court and the evidence. This is particularly true in a case where the State Court had jurisdiction, each party had a full day in Court, being represented by competent counsel, and no party having complained of the lack of a fair hearing or of the violation of constitutional rights and there is no claim of any irregularity whatsoever except that the final unappealable judgment of the State Supreme Court may be contrary to the laws of that State.

CONCLUSION.

For the many reasons stated above, petitioner's application for a certiorari herein should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Kalford K. Miazza, a member of the Bar of the Supreme Court of the United States and one of the attorneys for the respondents herein, do hereby certify that on this day I made service of the brief in opposition to the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, upon the petitioner, Manufacturers Record Publishing Company, through its attorneys of record, W. Scott Wilkinson, John M. Madison, and John C. Christian, Post Office Box 1707, 1708 Beck Building, Shreveport, Louisiana, by addressing three copies of the brief to each of the above counsel of record at his post office address as above indicated, and depositing same in the United States Post Office at New Orleans, Louisiana, with first-class postage prepaid (Shreveport, Louisiana, being less than five hundred (500) miles from New Orleans, Louisiana).

October , 1959.

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